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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,685	09/15/2003	Edward M. Pribonic	3077	5340

7590 05/22/2006

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EXAMINER

KING, BRADLEY T

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/679,685	Applicant(s) PRIBONIC ET AL.	
	Examiner Bradley T. King	Art Unit 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/13/2006 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2 and 11-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 has been amended to recite "as a function of velocity of the member between the magnet arrays". This feature appears to be specific to the embodiment having a spring. Claims 2 and 11-12 depend from claim 1, but positively recite an actuator. The original disclosure fails to support an actuator

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which adjust braking force as a function of velocity of the member between the magnet arrays.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-2, and 11-13 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 03/043865 (note equiv. US# 2004/0262103).

WO 03/043865 discloses all the limitations of the instant claims including; a fixed linear array 16 of permanent magnets; a moveable linear array 18 of permanent magnets disposed in a parallel relationship (see figure 2) with said fixed linear array of permanent magnets; a diamagnetic or non-magnetic member 70 disposed for parallel movement between said fixed and moveable linear arrays of magnets; and apparatus for adjusting braking force against the member parallel to movement, by parallel movement of said movable linear array of permanent magnets as a function of velocity of the member between the magnet arrays. Note the actuators can be controlled as a function of velocity. Also note MPEP 2114 and the 112 1st rejection above. It is maintained that the functional language fails to provide any structural difference,

particularly in light of the pneumatic and electric actuator embodiments. Also note paragraphs [0040-0041] of the Us Equiv.

Regarding claims 2, 11 and 12, see paragraph [0022] of the US equiv.

Regarding claim 13, see figure 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/043865 in view of Spieldiener et al (US# 6062350).

WO 03/043865 discloses all the limitations of the instant claim with exception to a spring actuator. Spieldiener et al disclose a similar device and further teaches the utilization of a spring to ensure proper braking application in the event of a loss of power (column 6, lines 15-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a spring actuator as taught by Spieldiener et al in the device of WO 03/043865 to provide proper brake application in case of a loss of power, thereby increasing the safety of the braking system.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/043865 in view of Post (US# 2003/0005849).

WO 03/043865 discloses all the limitations of the instant claims with exception to the explicit disclosure of a Hallbach array arrangement for the magnetic arrays.

Hallbach arrays are well known in the art and further demonstrated by Post. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a Hallbach array arrangement for the arrays of WO 03/043865 as known in the art and further demonstrated by Post to provide increased efficiency of the magnets, thereby maximizing braking effect.

Response to Arguments

Applicant's arguments filed 3/13/2006 have been fully considered but they are not persuasive. Regarding WO 03/043865, note the 112 1st rejection above. It is also maintained that the parent application noted by Applicant fails to fully support the claimed subject matter. Therefore the filing date of the instant application (continuation in part) is the relevant date with regards to prior art. It is maintained that the reference qualifies as prior art as set forth in the rejections above.

Regarding the 103 rejections, please note the new rejection above. Also note that the teaching reference has changed (see patent #'s).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley T. King whose telephone number is (571) 272-7117. The examiner can normally be reached on 11:00-7:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on (571) 272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BTK

 5/18/06
BRADLEY KING
PATENT EXAMINER